BIG HORN PARTNERSHIP AND RED DESERT PARTNERSHIP

IBLA 85-885, 85-886 85-889 Decided November 19, 1987

Appeal from decisions of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease applications W-86873, W-88304, and W-86646.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Generally

An oil and gas lease application must be rejected pursuant to 43 CFR 3112.2-1(d) (1982) (currently 43 CFR 3112.2-1(b)), where the applicant used a mailing address which was used by another person or entity in the business of providing assistance to those participating in the simultaneous oil and gas leasing system and the record shows that the same mailing address was used as a common address for collecting applicants' and others' mail as a mail forwarding box within the access and control of the person involved in providing the assistance in oil and gas lease filings.

APPEARANCES: Ted J. Gengler, Esq., Denver, Colorado, for appellants; Lyle K. Rising, Esq., Office of the Regional Solicitor, Rocky Mountain Region, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Big Horn Partnership and Red Desert Partnership have appealed from three separate decisions of the Wyoming State Office, Bureau of Land Management (BLM), dated July 16, 1985, which rejected their simultaneous oil and gas lease applications W-86873, W-88304, and W-86646.

Appellant Big Horn Partnership's lease application was drawn with first priority in the July 1983 simultaneous oil and gas lease drawing for parcel WY-404 (W-86873). Appellant Red Desert Partnership's lease applications were drawn with first priority in the same drawing for parcel WY-174 (W-86646) and in the September 1983 drawing for WY-265 (W-88304). BLM rejected the lease

offers after conducting an investigation of the activities and methods of the partnerships' filings. BLM determined that both Big Horn and Red Desert Partnerships used an address, Box 273700, Boca Raton, Florida 33427, which was used by several other partnerships in applications filed by Federal Investment Corporation (FIC), a filing service, and that three partnerships had filed on identical parcels. Referring to a memorandum report, dated July 12, 1985, which was incorporated into the decisions, BLM found that appellants had (1) violated 43 CFR 3112.2-1(d) (1982), revised at 43 CFR 3112.2-1(b) (1983), which prohibits the applicant from using the address of a person or entity in the business of providing assistance to those participating in the simultaneous program; and (2) had violated 43 CFR 3112.2-1(f) (1982), which prohibits a person or entity from holding, owning, or controlling any interest in more than one application for a particular parcel. A copy of BLM's memorandum report, excluding exhibits, is appended to this decision for reference.

Appellants contend there have been no violations of either of the cited regulations and that there are no factual grounds to sustain the BLM finding. As to the violation of the regulation preventing multiple filing, 43 CFR 3112.2-1(f), appellants assert the BLM memorandum report, itself, concluded:

[T]here was nothing obviously wrong with the manner in which the applications were submitted and signed by Federal Investment Corporation, as agent for either Red Desert Partnership, or Big Horn Partnership, with respect to any of the three (3) lease applications under consideration in these appeals;

- -- the Bureau of Land Management received partnership lists and copies of partnership agreements, and the conclusion resulting after the Wyoming Office performed an analysis of the filing patterns, and memberships of the various partnerships, was that such "analysis revealed no multiple filings;"
- -- the investigation of the Postal Inspector (Exhibit "G", attached to the Memorandum Report) merely confirmed that the address of Federal Research Corporation [1/] was "Sunrise Bay Office Building, 2701 East Sunrise Boulevard, Suite 500, Fort Lauderdale, Florida, 33304", and that the addresses used by

^{1/} The BLM memorandum report made the following findings regarding the relationship of FIC to the Federal Research Corporation (FRC):

[&]quot;It is clear that FIC, whatever its relation to FRC, is a filing service and identified itself as such in all applications on behalf of partnerships submitted and paid for by FRC.

[&]quot;In copies of partnership agreements submitted to this office on request of FIC (see case files), it is apparent that it was intended for FIC to act as managing partner of the partnerships and to contract with FRC for filing assistance. This relationship, if indeed that is what was intended, is so blurred as to be indistinguishable in the result. There is effectively no distinction whatsoever between FRC and FIC." (BLM Report at 8).

either Red Desert Partnership and/or Big Horn Partnership were clearly separate and distinct addresses from that sole address used, of record, by Federal Research Corporation. With respect to the Post Office Box, the Report of the Postal Inspector clearly concluded that there was no indication whatsoever that this post office box in any way applied to, or was an address of, Federal Investment Corporation; and

- -- the Memorandum Report concludes that there might be, in its author's opinion, the opportunity to preclude control by the members of the partnerships over their lease offers; but, there was no evidence whatsoever to show any commonality of membership or such actual preclusion of control, so that a case of multiple filings could be presented;
- -- Therefore, the final specific finding of the Report was that the author found the investigation presented facts which he found "violative (only) of the spirit of the rule prohibiting multiple filings". The author of the Report could find no actual violation of the regulation.

(Statement of Reasons at 5).

Appellants also deny their actions constituted a violation of 43 CFR 3112.2-1(b), which prohibits using the address of a person or entity in the business of providing assistance to those participating in a simultaneous program.

Appellants challenge the BLM conclusion of the memorandum report and the applicability of the two cases cited by BLM as precedent, <u>i.e.</u>, <u>Maurice W. Coburn (On Reconsideration)</u>, 82 IBLA 112 (1984); and Margaret G. Pascale, 83 IBLA 268 (1984).

Appellants emphasize that the report reveals no wrongdoing, stating:

Again, there must be kept in mind Exhibit "G" to the Memorandum Report, which sets forth the results of an inspection conducted by the Postal Inspector, and the conclusions of the Postal Inspector, to the effect that Federal Resources Corporation had an identifiable, separate address from any address used by either Big Horn Partnership, or Red Desert Partnership, and further that there was no indication that Federal Investment Corporation, as well as Federal Research Corporation, ever, of record, used any of the addresses adopted for business use by applicants.

(Statement of Reasons at 7).

Moreover, appellants assert that their actions were in fact taken as a <u>conscious</u> effort to avoid violating the regulation, stating:

[T]he investigation confirms the assumption that the Appellants herein -- Big Horn Partnership and Red Desert Partnership -- cognizant of the regulation, chose the addresses as set forth on their simultaneous oil and gas lease applications, to be (1) their business addresses for purposes of the partnership business, and (2) addresses other than the addresses of any filing service.

(Statement of Reasons at 11).

BLM has responded that appellants' offers "were, in essence, fraudulent" specifically stating:

What the appellants have done is to attempt to conceal certain crucial facts which, if not concealed, would lead to the outright rejection of appellants' offers. Specifically, appellants obviously attempted to conceal the fact that an employee, Daniel Gross, actually controlled the two partnerships in question and attempted to conceal that fact by using addresses other than that of FRC. As the BLM report clearly shows, the alternative mail addresses were nothing more than mail drops obtained by Daniel Gross. According to postal inspectors, one of the addresses was nothing more than a mail forwarding service. The others were rental apartments where Mr. Gross lived. See Ex. G, BLM Report. Moreover, as BLM notes in its report at 9, paragraph 12, a secretary for FRC called BLM representing herself as Mr. Gross' secretary, thereby establishing that Mr. Gross is indeed an employee of FRC. FRC has been less than forthcoming about the exact nature of that relationship. Nevertheless, the evidence shows the attempted circumvention of the regulations which require the offeror to use his address rather than that of the filing service. [Emphasis in original.]

(BLM Reply at 2).

BLM argues that appellants' use of the postal boxes under the filing service's control is the same as using the filing service's address, and states:

The very reason for the regulation requiring the disclosure and use of an applicant's own address, 43 CFR 3112.2-1(b), leads, in this case, to a violation of the second regulation which requires each person to make no more than one offer per parcel. If a person does not use his own address, then all his mail must come through his filing service, thereby essentially turning control over the application to the filing service. ** * When the application becomes nothing more than a tool of a filing service, then the Department is faced with a large number of offers by and, in essence, controlled by one person.

(BLM Reply at 3).

[1] First, we must determine whether appellants' initial use of the address 1220 N.E. 12th St., Ft. Lauderdale, Florida 33304, and later, P.O. Box 273700, Boca Raton, Florida 33427, violated the applicable regulations. The applicable regulation in effect during the July 1983 drawing was 43 CFR 3112.2-1(d) (1982), currently 3112.2-1(b). 2/ That regulation provided:

The application shall include the applicant's personal or business address. All communications relating to leasing shall be sent to that address and it shall constitute the applicant's address of record for the purpose provided in § 3112.4-1 of this title. The applicant shall not use the address of any other person or entity which is in the business of providing assistance to those participating in the simultaneous oil and gas leasing system. [Emphasis added].

The requirement that an applicant's address cannot be the same as that of his filing service was adopted as part of a series of regulatory changes aimed at ending abuses by filing services. 44 FR 56176 (1979) (proposed rules). Satellite 8307138, 99 IBLA 307 (1987); Satellite 8309119, 99 IBLA 301 (1987); Satellite 8211104, 89 IBLA 388, 395 (1985), aff'd Satellite 8301123 v. Hodel, 648 F. Supp. 410 (D.D.C. 1986); Margaret G. Pascale, supra, Maurice W. Coburn (On Reconsideration), supra. The specific provision was promulgated to "protect clients of filing services from being defrauded by unscrupulous filing services." 45 FR 35156, 35159 (1980) (final rules). Such had previously occurred when applicants whose names were selected for a lease were notified at their filing service address, but the filing service did not notify the applicant and, instead, submitted the first year's rental, obtained the lease, and assigned it, sometimes in collaboration with an oil company or middleman. 44 FR 56176 (1979). Such exercise of control by filing services not only damaged the integrity of the noncompetitive leasing system, but also, through the filing service clauses granting control, created an interest in applications which violated the fairness principle. See D. R. Weedon, Jr., 51 IBLA 378 (1980), and case cited therein; John V. Steffens, A-30601 (Jan. 26, 1967).

In the case at hand, the facts show appellants did list addresses which were ostensibly different from the filing service, whose address was listed as 2701 East Sunrise Blvd., Ft. Lauderdale, Florida 33304. The copies of the original partnership agreements contained in the records listed the East Sunrise Boulevard address as their principal place of business, but also listed the partnerships' mailing address as 8091 SW 24th place, Miramar, Florida 33304. 3/ The record, however, does not reflect that appellants ever used

^{2/} The current regulation was in effect during the Sept. 1983 drawing, and the text thereof is substantially the same as to the address requirements. 3/ A letter of Apr. 24, 1984, from FIC responding to a BLM request for further documentation enclosed copies of sample partnership agreements in which Article 1 section 1.02 and 1.03 included this information.

this mailing address for the purpose of their oil and gas filings. Instead, it confirms their mail was received on their behalf by Daniel B. Gross at his temporary residential addresses of 1220 NE 12 St. and 4400 NE 21st Ave., Ft. Lauderdale, Florida, for a period of time for applications W-86646 and W-86873. Later correspondence for these applications and for W-88304 was received at P.O. Box 273700, Boca Raton, Florida. Although the postal authorities verified that this postal box was rented by Chuck Safilian of C & S Forwarding on August 19, 1983 (Exh. G: BLM report), it is also clear that FIC used this same postal box as an address for its own reference as shown on correspondence with BLM to and from Robert B. Steenland of FIC. 4/ This exchange of correspondence confirms that FIC received mail at this address during a period when the partnerships were also receiving mail at this same postal box.

With this background we must conclude that these arrangements violated 43 CFR 3112.2-1(d) (1982) and 43 CFR 3112.2-1(b). There is sufficient basis to conclude that Daniel Gross, both as an agent for FIC and as an employee of FRC controlled the mail pickup for the partnerships and that, at least for a time, FIC shared the use of P.O. Box 273700 as a common mail address with the partnerships. In addition, at best, this postal box was merely used as a "mail drop" or "mail forwarding box" from which the partnerships' mail was transmitted directly to FIC. Contrary to appellants' contentions, we find our prior holding in Margaret G. Pascale, supra, directly applicable and dispositive of these cases. As in Pascale we find the use of the common postal box address with FIC and the use of the same postal box as a mail forwarding device a probable subterfuge to circumvent the regulation. These arrangements have the same practical effect as using the address of FIC for appellants' mailing address for the simultaneous program.

Similarly, we adhere to our previous conclusion necessarily resulting from the consequences of such actions, i.e., we can find no reason to depart from the requirement of strict compliance with the regulations. Margaret G. Pascale, supra at 272. E.g., Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd sub nom., Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976); Sorenson v. Andrus, 456 F. Supp. 499, 501 (D. Wyo. 1978). Accordingly, BLM properly rejected the lease offers for a violation of this regulatory requirement.

From our review, however, we are unable to accept BLM's request that we strictly interpret the record so that a finding of a violation of 43 CFR 3112.2-1(d), necessarily establishes the existence of multiple filings prohibited under 43 CFR 3112.2-1(f). That regulation provides, "No person or

^{4/} BLM received letters from Robert B. Steenland of FIC, dated Apr. 5 and 24, 1984, with the P.O. Box 273700 address typed as the letterhead address. A BLM letter dated Apr. 11, 1984, addressed to Steenland at FIC at that post office box was received for FIC by Chuck A. Safilian on Apr. 20, 1984.

entity shall hold, own or control any interest in more than one application for a particular parcel." Such prohibited agreements, schemes, plans, or arrangements resulting in multiple filings require rejection of an application under 43 CFR 3112.6-1(c) (1982) (currently 43 CFR 3112.5-1(b) (1983)). Although certain activities may raise suspicion of abuses, we cannot expand the applicability of these regulations to find violations for actions that are not clearly substantiated by the record.

BLM's initial analysis in April 1984 of the memberships of the various partnerships and their filing patterns disclosed no multiple filings. BLM concluded from the review that "never did two partnerships containing the same individual file on the same parcel" (BLM Report at 6). BLM's second examination of the commonality of partnership addresses in August 1984 led to a re-evaluation of this conclusion and the ultimate finding of a violation of the "spirit" of the regulation stating:

If these filings were made by the SAME applicants, or if there were a commonality of memberships among partnerships filing on the same parcels, then it would be a clear case of multiple filings. We did not see that commonality; however, we do see a commonality of control by Mr. Gross and through him by FIC / FRC. This commonality of control is less obvious than clear multiple filings, but we find it violative of the spirit of the rule prohibiting multiple filings. 43 CFR 3112.2-1(f) (1982, 1983). It is difficult to determine what precise interest or control attains to Mr. Gross. We believe the mere fact of physical control, as indicated by his receiving and signing the lease offers, is sufficient to imply control of disposition of the lease. It is, therefore, a prohibited interest.

(BLM Report at 9).

Although BLM suspects that the involvement of Gross implies control which amounts to a prohibited interest, there is no evidence in the record to document his actual interest in any lease application, nor that of FIC or FRC. There is nothing within the partnership agreements with the filing service that can be seen as creating an improper interest or arrangement. Moreover, BLM admits it found no duplication of individual members on the rolls of more than one partnership, i.e., no multiple interests among the partnerships. Accordingly, without more substantial factual basis we cannot sustain BLM's finding of a violation of 43 CFR 3112.2-1(f).

However, as we have already determined, violations of 43 CFR 3112.2-1(b) and 43 CFR 3112.2-1(d) are sufficiently serious by themselves to be fatal to the lease applications. Margaret G. Pascale, supra at 273. Such a violation is not considered trivial or inconsequential, but rather substantive and to be prevented to maintain the integrity of the simultaneous oil and gas lease system. Satellite 8211104, supra; Conway v. Watt, 717 F.2d 512 (10th Cir. 1983).

IBLA 85-885, 85-886 85-889

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed as modified herein.

John H. Kelly Administrative Judge

We concur:

Franklin D. Arness Administrative Judge

Will A. Irwin Administrative Judge

Memorandum:

To: File

From: Chief, Leasing Section

Subject: Report on Federal Research Corporation, Federal Investment Corporation

INTRODUCTION: This document discusses the activities and relationships of Federal Investment Corporation (FIC), Federal Research Corporation (FRC), and certain partnerships which participated in the Federal Automated Simultaneous Oil and Gas Program (SIMO) in 1982 and 1983. At issue are three lease offers, W-86646, W-86873, and W-88304. An analysis of the documents in the case files, records maintained in the Bureau of Land Management's Wyoming State Office, documents submitted by FIC, and inquiries by the US Postal Inspector's Office lead us to conclude that the filings and subsequent actions by the applicant partnerships, or agents acting on their behalf, violate regulations prohibiting multiple filings and certain relationships between applicants and filing services.

<u>Use by Applicant of the Address of a Filing Service</u>. Regulations promulgated May 23, 1980, 43 CFR 3112, sought to regulate the control of SIMO applications by agents. At 43 CFR 3112.2-1(d), the rule stated:

The application shall include the applicant's personal or business address. All communications relating to leasing shall be sent to that address and it shall constitute the applicant's address of record for the purpose provided in § 3112.4-1 of this title. The applicant shall not use the address of any other person or entity in the business of providing assistance to those participating in the simultaneous oil and gas leasing system.

With minor changes, this rule is still in effect. 43 CFR 3112.2-1(b).

The Interior Board of Land Appeals has recently exposited on this rule and its intent. Maurice W. Coburn (On Reconsideration), 82 IBLA 112. A primary intent of the rule is to prevent physical control of the lease offers by a filing service. It was felt that such physical control could lead to abuses. For example, if an applicant did not receive the lease offer itself, subsequent to having the application drawn in priority, it would be relatively easy for the filing service to make a sweetheart deal or to defraud the rightful applicant of the lease or of the proceeds of a sale. As another example, an unscrupulous filing service could use the names of dummy filers,

the names of deceased persons, etc., to make multiple filings for the same parcel. The lack of a real applicant could be effectively obscured if the filing service received all the mail. Proliferation of Associations and Partnerships in the SIMO Program. Subsequent to promulgation of the above rule, and in ways apparently not contemplated by the framers of the rule, there has been a proliferation of "associations" or "partnerships" set up by filing services. Such associations, typically with 10 to 20 members, are set up by the filing service for the sole purpose of filing applications and realizing shares of the potential profits to be made by acquiring and selling leases. An impetus for forming these associations is the higher fee charged for applications, increasing from \$10 to \$75 between 1980 and 1982. Sharing the cost of these higher fees allows the association to file on more parcels than individuals could. This of course results in greater chances of winning, albeit with a smaller share of the winnings going to each individual member.

Management of Associations or Partnerships. Where a partnership or association is a bona fide group of individuals with some geographic, business, family, or other affinity there should be no great difficulty in managing such a group. The membership would know one another, would be available for consultation and decisionmaking regarding disposition of the lease, and so forth. Where, however, the partnership or association comprises individuals with little or no affinity, perhaps not even knowledge of one another's names, there are greater difficulties in managing the group. There are a continuum of solutions to this management problem, ranging from appointing one member of the group as managing partner to appointing someone from outside the group, and ranging from direct participation in decisionmaking by the partners to delegation of decisionmaking to an outside individual.

It should be clear that the Bureau has no quarrel with <u>bona fide</u> associations or partnerships made up of individuals sharing decisionmaking and control. Where the partnership or association is put together by a filing service and where a filing service maintains effective control, either directly or through a surrogate, of the decisionmaking of the group, then the Bureau has cause for concern.

It is difficult for the Bureau to determine the degree and center of control exercised over decisions by the large variety of groups. It is a substantial burden to make all the necessary inquiries, and answers to inquiries are not always forthcoming or forthright. Generally, the individuals in a group may have little knowledge of the workings of the group as a whole. Although we are not confined to making inquiries of the named applicant, it is more than a substantial burden to query members of a group individually. By default, inquiries are usually made, if at all, of the "nominee" or "managing agent". In many cases, this is a surrogate of the filing service. The Bureau has been slow to deal with this phenomenon.

Multiple Filings. Rules at 43 CFR 3112.2-1(f) state:

No person or entity shall hold, own or control any interest in more than one application for a particular parcel.

This is the prohibition against multiple filings. There is little guidance regarding what constitutes control of an interest in an application. Taken in context with the rule requiring the applicant not to use the address of a filing service, we would be suspicious of any arrangement whereby a filing service. or its agent, physically 'controls' the lease offer by receiving those forms in the mail. Additionally, where the membership of a partnership has no natural affinity, proximity, or demonstrated ability to make decisions regarding the disposition of the lease offer in concert, then we may also infer that 'control' must devolve onto a third party. Where the third party has 'control' over more than one application for a particular parcel, then we infer multiple filing in violation of 43 CFR 3112.2-1(f).

<u>Mail Drops</u>. Where a filing service has set up a partnership or association, there is usually an effort to attempt to maintain control over activities of the partnership without violating the letter of the rule prohibiting the applicant's use of the address of a person or entity in the business of providing filing assistance. A simple stratagem is to use a post office box or street address which is different from the filing service's but is still controlled by them.

In the <u>Coburn</u> decision, IBLA found that using a "mail drop" would violate rule 43 CFR 3112.2-1(d) as surely as using the address of a person or entity in the business of providing assistance.

In <u>Margaret G. Pascale</u>, 83 IBLA 268, a firm (Aplan), acting as an agent for several partnerships, and using a series of post offices boxes, had contracted with a filing service to provide parcel recommendations and prepare application forms for several partnerships formed by Aplan. The Board found that this arrangement was merely a subterfuge; that Aplan was, itself, an entity which was engaged in the business of providing assistance to those participating in the simultaneous oil and gas leasing system; and that the use of a common address (Aplan's), or series of post office boxes controlled by Aplan, was likewise prohibited.

FACTS

- 1. Federal Research Corporation (FRC), 2701 East Sunrise Blvd., Fort Lauderdale, Florida is an entity engaged in the business of providing assistance to those participating in the simultaneous oil and gas leasing system. The president of the Corporation is Joe Doyle.
- 2. In the July 1983 filing, Federal Research Corporation mailed nearly \$160,000 worth of applications on behalf of individuals and partnerships. There were 578 application forms (Part B's) filed on behalf of individuals and 72 application forms filed on behalf of partnerships.

On the Part B application forms filed on behalf of partnerships (Exhibit A -- contains all forms filed for Wyoming parcels), the address used is:

1220 NE 12th St. Ft. Lauderdale, Florida 33304

On these forms, in the filing service block, is stamped:

FEDERAL INVESTMENT CORPORATION 2701 EAST SUNRISE BOULEVARD FORT LAUDERDALE, FLORIDA 33304

In the signature block is stamped the phrase

FEDERAL INVESTMENT CORPORATION, AGENT FOR

followed in script by, e.g.:

Big Horn Partnership by Teresa Migneo

Teresa Migneo signed all applications submitted by FRC on behalf of FIC as agent for the partnerships. Taken alone, there is nothing obviously wrong with any single application submitted and signed this way.

For applications submitted on behalf of individuals (Example B -- contains examples of forms), the applicant block contains the name of the individual applicant and the individual's address. In the filing service block is stamped:

FEDERAL RESEARCH CORPORATION 2701 EAST SUNRISE BOULEVARD FORT LAUDERDALE, FLORIDA 33304

In the signature block is stamped:

FEDERAL RESEARCH CORPORATION, AGENT FOR

followed in script by, e.g.:

James F. Carpenter by Teresa Migneo

Teresa Migneo signed all applications submitted by FRC as agent for individuals.

- 3. There were two checks accompanying the applications submitted by FRC / FIC in July 1983 (Exhibit C). One was for a large amount, \$158,250, drawn on the Pan American Bank, Lauderhill, Florida from the account of FRC, 2701 East Sunrise Blvd., Fort Lauderdale, Fla. 33304. The check has the notation, "Government Filing Fees". A second check, for \$2000, is identical to the first (same bank, same account, and same address) except for the notation, "excess filing fees". Both checks have an illegible signature, which may be that of Joe Doyle. These two checks covered all submissions by FRC, including those submitted on behalf of FIC as agent for partnerships.
- 4. In the September 1983 filing, FRC submitted nearly \$130,000 worth of filings, including 1207 Part B application forms on behalf of individuals and 68 Part B application forms on behalf of partnerships.

On the applications submitted for partnerships (Exhibit D -- contains all forms filed for Wyoming parcels), the applicant's address, in every case is:

P.O. Box 273700 Boca Raton, FL 33427

In the filing service block is stamped:

FEDERAL INVESTMENT CORPORATION 2701 EAST SUNRISE BOULEVARD FORT LAUDERDALE, FLORIDA 33304

In the signature block is stamped:

FEDERAL INVESTMENT CORPORATION, AGENT FOR

followed in script by, e.g.:

Big Horn Partnership by Teresa Migneo

Teresa Migneo signed all applications submitted by FRC on behalf of FRC as agent for partnerships.

For applications submitted on behalf of individuals (Exhibit E -- contains examples of forms), each has the name and address of the individual. In the filing service block is stamped:

FEDERAL RESEARCH CORPORATION 2701 EAST SUNRISE BOULEVARD FORT LAUDERDALE, FLORIDA 33304

In the signature block is stamped:

FEDERAL RESEARCH CORPORATION, AGENT FOR

followed in script by, e.g.:

Gary L. Elliot by Teresa Migneo

Teresa Migneo signed all applications submitted by FRC as agent for individuals.

- 5. FRC submitted two checks (Exhibit F) for the September 1983 filing. One check, for \$127,125, is drawn on the Barnett Bank, Fort Lauderdale, Florida on the account of FRC, 2701 East Sunrise Blvd., Fort Lauderdale, FL 33304. The check has the notation, "Government Filing Fees 9/83". It has an illegible signature which may be that of Joe Doyle. The second check, for \$2000, is similar to the first (same bank, same account, and same illegible signature). It has the notation, "* * excess payment of Government Filing Fees 9/83". As in July 1983, these two checks covered ALL filings for FRC / FIC, both those submitted on behalf of individuals and those submitted on behalf of partnerships
- 6. In the July 1983 filing, Red Desert Partnership, 1220 NE 12 St, Ft. Lauderdale, FL 33304 won first priority on parcel WY-174, serialized as case W-86646.

W-86646 (see case file).

- A. Lease forms and stipulations were sent to Red Desert Partnership, 1220 NE 12 St., Ft. Lauderdale, FL 33304, and received by Daniel B. Gross at that address on October 1, 1983.
 - B. Mr. Gross signed and dated the lease offer forms and stipulations

- October 4, 1983 and mailed them back to this office, received October 14, 1983. The completed forms indicated that The Red Desert Partnership was the Offeror/Lessee and that Federal Investment Corporation was the managing agent for the lessee. Mr. Gross signed both on behalf of the lessee and the managing agent.
- C. On October 28, 1983, this office received an appeal from Wolverine Resources (Robert Fletcher), the number two drawee for the parcel, challenging the selection of Red Desert and asking for an investigation. The "appeal" pointed out that several partnerships using a common address had filed on the same parcels.
- D. On November 4, 1983, this office received further correspondence from Wolverine changing their appeal to a protest.
- E. This office, after having ascertained that numerous partnerships using the address 1220 NE 12th St., Ft. Lauderdale, FL 33304 had filed on the parcel in question or were otherwise connected with FIC, sent a letter, dated November 14, 1983, to Baker Energy, et. al., requesting documents which would reveal the membership of the various partnerships and the service agreements among the partners and between the partnerships and FIC. This letter was returned as undeliverable.
- F. On March 16, 1984, a similar letter was sent to FIC at 2701 East Sunrise Boulevard, Fort Lauderdale, Florida 33304. The return receipt shows this letter received on March 22, 1984, by a Faye Lewis (?). Another letter was sent, also on March 16, 1984, to Red Desert Partnership, 1220 North East 12th Street, Fort Lauderdale, FL 33304. The latter was returned as undeliverable.
- G. On April 6, 1984, we received a letter from Robert B. Steenland of FIC, P.O. Box 273700, Boca Raton, Florida 33427.
- H. On April 11, 1984, this office sent a letter to Mr. Steenland at P.O. Box 273700 acknowledging partial submission of material and requesting the remainder. This letter was received on April 20, 1984, signed by Chuck A.(?) Safilian. We subsequently received partnership lists and copies of agreements as requested.

Note: According to Postal authorities, P.O. Box 273700 was rented by Chuck Safilian of C & S Forwarding on August 19, 1983. (Exhibit G).

- I. On and around April 19, 1984, this office performed an analysis of the filing patterns and memberships of the various partnerships filed by FIC during the July 1983 filing. That analysis revealed no multiple filings. Although individuals on many occasions belonged to more than one partnership, and although several partnerships on many occasions filed on the same parcel, never did two partnerships containing the same individual file on the same parcel.
- J. As a result of this analysis, on June 13, 1984, this office issued a decision to Wolverine Resources dismissing their protest.
 - K. On June 22, 1984, the subject lease was clearlisted by the Casper District Office.
- L. On August 23, 1984, this office received a decision from IBLA, <u>Maurice W. Coburn (On Reconsideration)</u>, 82 IBLA 112. That decision caused us to look harder at the commonality of addresses and the issue of control of applications by a filing service or their agent. That harder look resulted in this report and related decisions.

- 7. Also in the July 1983 filing, Big Horn Partnership, 1220 NE 12 St, Ft. Lauderdale, FL 33304 won first priority on parcel WY-404, serialized as case W-86673. W-86673 (see case file).
- A. On November 1, 1983, lease forms and stipulations were transmitted to Big Horn Partnership, 1220 NE 12 St., Ft. Lauderdale FL 33304. This package was returned as undeliverable on November 18, 1983.
- B. There is a note in the case file to the effect that the package should be remailed to 4400 NE 21st Ave., Ft. Lauderdale 33308, in response to a telephone communication. The package was remailed to that address, received by Mr. Dan Gross on November 11, 1983, and received back in this office by November 29, 1983. This was within the 30 days allowed. The lease offer was completed, "(Lessee) Big Horn Partnership, (Atty-in-fact or Agent) Federal Investment Corporation Managing Agent by: (signature) Daniel B. Gross".
- C. On March 15, 1984, the Rawlins District Office informed that certain lands within the parcel were within a known geological structure (KGS). A lease for the remaining lands was prepared for issuance. A suspension of the simultaneous program was in effect.
- D. Prior to issuance of the lease, the IBLA handed down their decision in <u>Maurice W. Coburn</u> (On Reconsideration), IBID.
- 8. In the September 1983 filing, Red Desert Partnership, P.O. Box 273700, Boca Raton, FL 33427, won first priority on parcel WY-265, serialized as case W-88304.

W-88304 (see case file).

- A. Lease forms and stipulations were prepared and mailed to P.O. Box 273700 by Certified Mail on August 3, 1984. The return receipt shows receipt on August 10, 1984. The signature on the green card is unclear, but it is probably that of Chuck Safilian.
- B. The lease offer and stipulation forms were signed by Daniel B. Gross as "Managing Agent for Red Desert Partnership", dated August 23, 1984, and returned to this office on August 24, 1984. No mention on this lease is made of FIC. Whereas on the two previous leases, Mr. Gross signed on behalf of FIC, which was the agent for the partnerships, on this lease, Mr. Gross assumed the role of the agent himself.
- 9. On March 12, 1985, we received correspondence from Mr. Gross as managing agent for Red Desert Partnership, P.O. Box 273700, Boca Raton, Florida 33427, inquiring as to when lease W-88304 would issue.
- 10. On March 25, 1985, in response to a telephone request, this office received a report from Paul E. Feltman, Postal Inspector in Fort Lauderdale, Florida regarding the various addresses used by Gross / FIC / FRC (Exhibit G).
- 11. On May 13, 1985, we received correspondence, dated May 6, 1985, from Mr. Gross as managing agent for Red Desert Partnership, P.O. Box 273700, inquiring about issuance of lease W-86873. This is confusing because Big Horn Partnership is the offeror for that lease. In the letter, Mr. Gross lists the partners of Red Desert Partnership.

- 12. On May 21, 1985, Andrew Tarshis received a call from Ms. Carol Witt of FRC. Ms. Witt, telephone (305) 561-9101, represented herself as Mr. Gross' secretary and inquired further as to the subject of the May 6 letter. Mr. Tarshis explained that there were some difficulties regarding addresses and control of the lease offer. Ms. Witt volunteered that Mr. Gross had no interest in the offer itself and that he performed his duties as manager of the partnerships without remuneration. Mr. Tarshis informed Ms. Witt that no decision had been reached at that time, but advised her that her statements could be detrimental to Mr. Gross' position. She declined further comment.
- 13. During the July 1983 filing, every partnership filed on at least one parcel which was filed on by at least one other partnership. (Exhibit H).
- 14. During the September 1983 filing, every partnership filed on at least one parcel which was filed on by at least one other partnership. (Exhibit I).

Note: In July Baker Energy was filed as a partnership by FIC. In September Baker Energy was filed using a unique address in Indiana. For the purposes here, we do not consider Baker Energy in September to be controlled by Gross / FIC / FRC. The Rogalski Partnership and Baker Energy were filed on the same parcels in September.

FINDINGS

- 15. It is clear that FIC, whatever its relation to FRC, is a filing service and identified itself as such in all applications on behalf of partnerships submitted and paid for by FRC.
- 16. In copies of partnership agreements submitted to this office on request of FIC (see case files), it is apparent that it was intended for FIC to act as managing partner of the partnerships and to contract with FRC for filing assistance. This relationship, if indeed that is what was intended, is so blurred as to be indistinguishable in the result. There is effectively no distinction whatsoever between FRC and FIC.
- 17. Mr. Dan B. Gross as agent of FIC first used his home address(es) and later a P.O. Box as the address of record of the partnerships. The P.O. Box is a "mail forwarding box" rented and accessed by Chuck Safilian of C & S Forwarding.
- 18. We do not know the precise role or relationship of Mr. Gross to FIC, FRC, or to the partnerships. He purported to be the agent of both FIC and the partnerships at different times. We do not know what remuneration if any was involved. We seriously doubt that he performed his tasks for nothing or that there was no consideration between him and FIC or FRC. So far as we know, there was no equity interest by Mr. Gross in the partnerships. There was very obviously control or the opportunity for control of disposition of the lease offers or leases, since Mr. Gross received all the mail.
- 19. We conclude that the arrangements described above violate regulations prohibiting an applicant from using the address of any other person or entity which is in the business of providing assistance to those participating in the

simultaneous oil and gas leasing program. 43 CFR 3112.2-1(d) (1982), revised at 3112.2-1(b) (1983). The address(es) used for the partnerships is (are) not literally the address of FIC (or FRC), which is 2701 East Sunrise Blvd.. The are, however, addresses of an agent of the filing service or a "mail forwarding box" from which mail is passed to the agent of the filing service. They are, therefore, effectively the same thing as the address(es) of the filing service.

- 20. During the filing periods, July 1983 and September 1983, respectively, all partnerships used the same address, either 1220 NE 12th St, Fort Lauderdale, FL 33304 or P.O. Box 273700, Boca Raton, FL 33427. The commonality of addresses for the partnerships coupled with the receipt of all mail by Mr. Gross, FIC, or FRC provides the opportunity to preclude involvement or control by the memberships of the partnerships over lease offers or other documents mailed to those addresses. The practical effect is that the filing service or its agent may maintain all control over the documents.
- 21. We interpret the intent of the rule at 43 CFR 3112.2-1(d) (1982) as to prevent the ability of a filing service, or its agents, from using their considerable monetary resources to file on AND control the disposition of more than one filing for the same parcel. In both the July 1983 and September 1983 filings, respectively, every partnership filed on parcels that another partnership also filed on. If these filings were made by the SAME applicants, or if there were a commonality of memberships among partnerships filing on the same parcels, then it would be a clear case of multiple filings. We did not see that commonality; however, we do see a commonality in control by Mr. Gross and through him by FIC / FRC. This commonality of control is less obvious than clear multiple filings, but we find it violative of the spirit of the rule prohibiting multiple filings. 43 CFR 3112.2-1(f) (1982, 1983). It is difficult to determine what precise interest or control attains to Mr. Gross. We believe the mere fact of physical control, as indicated by his receiving and signing the lease offers, is sufficient to imply control of disposition of the lease. It is, therefore, a prohibited interest.

Andrew L. Tarshis Chief, Leasing Section